

SIMEON DEL ROSARIO, PLAINTIFF AND APPELLEE VS. THE EQUITABLE INSURANCE AND CASUALTY CO., INC., DEFENDANT AND APPELLANT.

G.R. No. 16215. June 29, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On February 7, 1957, the defendant Equitable Insurance and Casualty Co., Inc., issued Personal Accident Policy No. 7136 on the life of Francisco del Rosario, alias Paquito Bolero, son of herein plaintiff-appellee, binding itself to pay the sum of P1,000.00 to P3,000.00, as indemnity for the death of the insured. The pertinent provisions of the Policy, recite:

Part I—Indemnity for Death

If the insured sustains any bodily injury which is effected solely through violent, external, visible and accidental means, and which shall result, independently of all other causes and within sixty (60) days from the occurrence thereof, in the Death of the Insured, the Company shall pay the amount set opposite such injury:

SECTION 1. Injury sustained other than those specified below unless excepted hereinafter
.....P1.000.00

SECTION 2. Injury sustained by the wrecking or disablement of a railroad passenger car or street railway car in or on which the insured is travelling as a fare-paying passenger „..... P1.500.00

SECTION 3. Injury sustained by the burning of a church, theatre, public library or municipal administration building while the Insured is therein at the commencement of the fire „..... P2,000.00

SECTION 4. Injury sustained by the wrecking or disablement of a regular passenger elevator car in which the Insured is being conveyed as a passenger (Elevator in mines excluded) P2.500.00

SECTION 5. Injury sustained by a stroke of lightning or by a cyclone P3.000.00

Part VI—Exceptions

This policy shall not cover disappearance of the Insured nor shall it cover Death, Disability, Hospital fees, or Loss of Time, caused to the insured:

* * * (h) By drowning except as a consequence of the wrecking or disablement in the Philippine waters of a passenger steam or motor vessel in which the Insured is travelling as a fare-paying passenger;

A rider to the Policy contained the following:

"IV. Drowning

It is hereby declared and agreed that exemption clause letter (k) embodied in Part VI of the policy is hereby waived by the company, and to form a part of the provision covered by the policy."

On February 24, 1957, the insured Francisco del Ecsario alias Paquito Bolero, while on board the motor launch "ISLAMAM together with 33 others, including his beneficiary in the Policy, Remedios Jayme, were forced to jump off said launch on account of fire which broke out on said vessel, resulting to the death by drowning, of the insured and beneficiary in the waters of Jolo.

On April 13, 1957, Simeon del Rosario, father of the insured, and as the sole heir, filed a claim for payment with defendant company, and on September 13, 1957, defendant company paid to him (plaintiff) the sum of P1,000.00, pursuant to Section 1 of Part 1 of the policy. The receipt signed by plaintiff reads—

"RECEIVED OF THE EQUITABLE INSURANCE & CASUALTY CO., INC., THE SUM OF PESOS—ONE THOUSAND (P1,000.00) Philippine Currency, being settlement in full for all claims and demands against said Company as a result of an accident which occurred on February 26, 1957, insured under our Accident Policy No. 7136, causing the death of the Assured.

In view of the foregoing, this policy is hereby surrendered and Cancelled.

LOSS COMPUTATION

Amount of Insurance..... P1,000.00"

On the same date (September 13, 1957), Atty. Vicente J. Francisco, wrote defendant company acknowledging receipt by his client (plaintiff herein), of the P1,000.00, but informing said company that said amount was not the correct one. Atty. Francisco claimed—

"The amount payable under the policy, I believe should be P1500.00 under the provision of Section 2, part 1 of the policy, based on the rule of *pari materia* as the death of the insured occurred under the circumstances similar to that provided under the aforesaid section."

Defendant company, upon receipt of the letter, referred the matter to the Insurance Commissioner, who rendered an opinion that the liability of the company was only P1,000.00, pursuant to Section 1, Part 1 of the Provisions of the policy (Exh. F, or 3). Because of the above opinion, defendant insurance company refused to pay more than P1,000.00. In the meantime, Atty. Vicente Francisco, in a subsequent letter to the insurance company, asked for P3,000.00 which the Company refused to pay. Hence, a complaint for the recovery of the balance of P2,000;00 more was instituted with the CFI of Rizal (Pasay City, Branch VIII), praying for a further sum of P10,000.00 as attorney's fees, expenses of litigation and costs.

Defendant Insurance Company presented a Motion to Dismiss, alleging that the demand or claim as set forth in the complaint had already been released, plaintiff having received the full amount due as appearing in the policy and as per opinion of the Insurance Commissioner. An opposition to the motion to dismiss was presented by plaintiff, and other pleadings were subsequently filed by the parties. On December 28, 1957, the trial court deferred action on the motion to dismiss until termination of the trial of the case, it appearing that the ground thereof was not indubitable. In the Answer to the complaint, defendant company practically admitted all the allegations therein, denying only those which stated that under the policy its liability was P3,000.00.

On September 1, 1958, the trial court promulgated an amended Decision, the pertinent portions of which read—

"* * * * *

Since the contemporaneous and subsequent acts of the parties show that it was not their intention that the payment of P1,000.00 to the plaintiff and the signing of the loss receipt exhibit '1' would be considered as

releasing the defendant completely from its liability on the policy in question, said intention of the parties should prevail over the contents of the loss receipt '1' (Articles 1370 and 1371, New Civil Code).

*** ** Under the terms of this policy, defendant company agreed to pay P1,000.00 to P3,000.00 as indemnity for the death of the insured. The insured died of drowning. Death by drowning is covered by the policy the pertinent provisions of which reads as follows:

* * * * *

'Part I of the policy fixes specific amounts as indemnities in case of deaths resulting from bodily injury which is effected solely thru violence, external, visible and accidental means' but, Part I of the Policy is not applicable in case of death by drowning because death by drowning is not one resulting from bodily injury which is affected solely thru violent, external, visible and accidental means as Bodily Injury means a cut, a bruise, or a wound and drowning is death due to suffocation and not any cut, bruise or wound.

"* * * * *

Besides, on the face of the policy Exhibit 'A' itself, death by drowning is a ground for recovery a part from the bodily injury because death by bodily injury is covered by Part I of the policy while death by drowning is covered by Part VI thereof. But while the policy mentions specific amounts that may be recovered for death for bodily injury, yet, there is no specific amount mentioned in the policy for death thru drowning although the latter is, under Part VI of the policy, a ground for recovery thereunder. Since the defendant has bound itself to pay P1,000.00 to P3,000.00 as indemnity for the death of the insured but the policy does not positively state any definite amount that may be recovered in case of death by drowning, there is an ambiguity in this respect in the policy, which ambiguity must be interpreted in favor of the insured and strictly against the insurer so as to allow a greater indemnity.

* * * plaintiff is therefore entitled to recover P3,000.00. The defendant had already paid the amount of P1,000.00 to the plaintiff so that there still remains a balance of P2,000.00 of the amount to which plaintiff is entitled to recover under the policy exhibit

The plaintiff asks for an award of P10,000.00 as attorney's fees and expenses of litigation. However, since it is evident that the defendant had not acted in bad faith in refusing to pay plaintiff's claim, the Court cannot award plaintiff's claim for attorney's fees and expenses of litigation.

IN VIEW OF THE FOREGOING, the Court hereby reconsiders and sets aside its decision dated July 21, 1958 and hereby renders judgment ordering the defendant to pay plaintiff the sum of Two Thousand (P2,000.00) Pesos and to pay the costs."

The above judgment was appealed to the Court of Appeals on three (3) counts. Said Court, in a Resolution dated September 29, 1959, elevated the case to this Court, stating that the genuine issue is purely legal in nature.

All the parties agree that indemnity has to be paid. The conflict centers on how much should the indemnity be. We believe that under the proven facts and circumstances, the findings and conclusions of the trial court are well taken, for they are supported by the generally accepted principles or rulings on insurance, which enunciate that where there is an ambiguity with respect to the terms and conditions of a policy, the same will be resolved against the one responsible thereof. It should be recalled in this connection, that generally, the insured, has little, if any, participation in the preparation of the policy, together with the drafting of its terms and conditions. The interpretation of, obscure stipulations in a contract should not favor the party-who caused the obscurity (Art. 1377, N.C.C.), which, "in the case at bar, is the insurance company.

** ** And so it has been generally held that the 'terms in an insurance policy, which are ambiguous, equivocal

or uncertain * * * are to be construed strictly against, the insurer, and liberally in favor of the insured so as to effect the dominant purpose of indemnity or payment to the insured, especially where a forfeiture is involved,' (29 Am. Jur. 181) and the reason for this rule is that the 'insured usually has no voice in the selection or arrangement of the words employed and that the language of the contract is selected with great care and deliberation by expert and legal advisers employed by, and acting exclusively in the interest of, the insurance company' (44 C. J. S. 1174). *Calanoc vs. Court of Appeals, et al.* 98 Phil., 79."

"* * * Where two interpretations, equally fair, of languages used in an insurance policy may be made, that which allows the greater indemnity will prevail. (*L'Engel vs. Scottish Union & Nat. F. Ins. Co.* 48 Fla. 82, 37 So. 462, 67 LRA 581, 111 Am. St. Rep. 70, 5 Ann. Cas. 749)."

At any event, the policy under consideration, covers death or disability by accidental means, and the appellant insurance company agreed to pay P1,000.00 to P3,000.00, as indemnity for death of the insured.

In view of the conclusions reached, it would seem unnecessary to discuss the other issues raised in the appeal.

The judgment appealed from is hereby affirmed. With out costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, and Regala, JJ., concur.

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